

Volunteer Quality Alert 2006-04 – Guidance for Determining a Qualifying Child, Qualifying Relative, and Qualifying Person

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Please share this message with all Volunteers immediately.

This VQA contains examples and scenarios which details the new law.

Many questions have been raised this filing season regarding the new Uniform Definition of a Child and the rules for claiming exemptions and Head of Household filing status. You can claim an exemption for a “qualifying child” or a “qualifying relative.” You qualify for Head of Household filing status if you have a “qualifying person.” At the end of this Volunteer Quality Alert (VQA), you will find two tables you can use as Job Aids; they are: *Overview of the Rules for Claiming an Exemption for a Dependent* and *Who is a Qualifying Person for Filing Head of Household?* In addition, at the end of this VQA, you will find a series of scenarios that help illustrate the different points of the law. Please send any tax law questions you may have to NanEllen.S.Fuller@irs.gov

An Interview and Intake Sheet (IRS Form 13614 or a partner-developed form containing the critical data) is required to be used at all volunteer sites. This form is the starting point for further probing and interviewing to assess a taxpayer's tax situation. Use of this form by all volunteers will assist in gathering the information necessary to prepare an accurate tax return.

UNIFORM DEFINITION OF A QUALIFYING CHILD:

Working Families Tax Relief Act of 2004 (WFTRA) - Beginning in 2005, one definition for a “qualifying child” applies for each of the following tax benefits:

- Dependency Exemption
- Head of Household Filing Status
- Earned Income Tax Credit (EITC)
- Child Tax Credit
- Credit for Child and Dependent Care Expenses

This VQA will focus primarily on the rules for Dependency Exemption and Head of Household Filing Status.

TESTS TO MEET:

In general four (4) tests must be met to claim someone as a “qualifying child”:

1. **Relationship Test** – The child must be the taxpayer's child (including an adopted child, step child, or eligible foster child), brother, sister, stepbrother, stepsister, or descendent of one of these relatives. An adopted child includes a child lawfully placed with a taxpayer for legal adoption even if the adoption is not final. An eligible foster child is any child placed with a taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.
2. **Residency Test** – The child must live with the taxpayer for more than half of the tax year. Exceptions apply for temporary absences for special circumstances, children who were born or died during the year, children of divorced or separated parents, and kidnapped children.
3. **Age Test** - The child must be under a certain age, depending on the tax benefit claimed, to be a qualifying child.
4. **Support Test** – The child cannot provide more than half of his/her own support during the year.

NOTE: A child who is not a qualifying child may be a qualifying relative, if all of the tests for a qualifying relative are met. A child is not a taxpayer's qualifying relative if the child is the taxpayer's qualifying child or the qualifying child of anyone else.

QUALIFYING CHILD OF MORE THAN ONE PERSON – TIE-BREAKER RULES:

Sometimes a child meets the tests to be a qualifying child of more than one person. However, only one person can treat the child as a qualifying child. If the taxpayers have the same qualifying child, they may decide among themselves who will claim the child. If they cannot agree, and more than one taxpayer files a return using the same child, the IRS will use the tie-breaker rules explained in the table below to determine which taxpayer will be allowed to claim the child.

When More Than One Person Files a Return Claiming the Same Qualifying Child (Tie-Breaker Rule)

IF . . .	THEN the child will be treated as the qualifying child of the . . .
Only one of the persons is the child's parent,	Parent.
Both persons are the child's parent,	Parent with whom the child lived for the longer period of time. If the child lived with each parent for the same amount of time, then the child will be treated as the qualifying child of the parent with the highest adjusted gross income (AGI).
None of the persons are the child's parent,	Person with the highest AGI.

NEW! In the past, these same tiebreaker rules applied only to a qualifying child for the Earned Income Tax Credit. Beginning in 2005, these rules apply to all five of the tax benefits. The other person(s) cannot take any of the five tax benefits unless he or she has a different qualifying child. You cannot agree to divide these tax benefits.

SPECIAL RULES FOR DIVORCED OR SEPARATED PARENTS:

A child will be treated as being the qualifying child or qualifying relative of his or her noncustodial parent if all the following apply. A custodial parent is the parent having custody of the child for the greater part of the year. Custody, for this purpose, means the child lives in the parent's main home. The noncustodial parent is the parent who is not the custodial parent.

- The parents are divorced or legally separated or lived apart at all times during the last 6 months of the year.
- The child received over half of his or her support from the parents.
- The child is in custody of 1 or both of the parents for more than half the year.
- The custodial parent signs a written statement that he or she will not claim the child as a dependent (Form 8332 may be used). Or, the divorce decree, separate maintenance, or written separation agreement between the parents provides that the noncustodial parent can claim the child as a dependent. Other conditions must be met and an exception applies to certain pre-1985 decrees or agreements.

NOTE: The rule applies for the dependency exemption and child tax credit. It does not apply for Head of Household filing status, the Credit for Child and Dependent Care expenses, or the Earned Income Tax Credit.

For a training refresher, Volunteers can go to ...

- Volunteer Quality Alerts on the IRS website at www.irs.gov Enter the Keyword *Community Network*, scroll down to Partner Products and Volunteer Resource Center or go to <http://www.irs.gov/individuals/article/0,,id=120856,00.html>
- Publication 4012, Volunteer Resource Guide
- Link & Learn Taxes, <http://www.irs.gov/app/vita/index.jsp>
- Publication 678, Volunteer Student Guide
- Publication 501, Exemptions, Standard Deductions, and Filing Status
- Publication 504, Divorced or Separated Parents

TABLE 1 – OVERVIEW OF THE RULES FOR CLAIMING AN EXEMPTION FOR A DEPENDENT

Beginning in 2005, there are two types of dependency exemptions - a dependent qualifying child (DQC) and a dependent qualifying relative (DQR) - each of which has its own set of requirements. The five dependency tests effective for past years continue to apply to dependents for qualifying relatives. The Working Families Tax Relief Act of 2004 (WFTRA) established the new uniform definition of a qualifying child. A child who is not a qualifying child may be a dependent qualifying relative, if all of the tests are met.

The following table is only an Overview of the Rules for Claiming an Exemption for a Dependent. Please see Publication 501 for more details.

<ul style="list-style-type: none"> You cannot claim any dependents if you, or your spouse if filing jointly, could be claimed as a dependent by another taxpayer. You cannot claim a married person who files a joint return as a dependent unless that joint return is only a claim for refund and there would be no tax liability for either spouse on separate returns. You cannot claim a person as a dependent unless that person is a U.S. citizen, U.S. resident, U.S. national, or a resident of Canada or Mexico, for some part of the year. ¹ You cannot claim a person as a dependent unless that person is your qualifying child or qualifying relative. 	
Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
<ol style="list-style-type: none"> The child must be your son, daughter, stepchild, eligible foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of them. The child must be (a) under age 19 at the end of the year, b) under age 24 at the end of the year and a full-time student, or (c) any age if permanently and totally disabled. 3. The child must have lived with you for more than half of the year.² The child must not have provided more than half of his or her own support for the year. If the child meets the rules to be a qualifying child of more than one person, you must be the person entitled to claim the child as a qualifying child. 	<ol style="list-style-type: none"> The person cannot be your qualifying child or qualifying child of anyone else. The person either (a) must be related to you in one of the ways listed under <i>Relatives who do not have to live with you</i>, or (b) must live with you all year as a member of your household.² (Note: Relationship cannot violate local law.) The person's gross income for the year must be less than \$3,200.³ You must provide more than half of the person's total support for the year.⁴
¹ There is an exception for certain adopted children. ² There are exceptions for temporary absences, children who were born or died during the year, children of divorced or separated parents, and kidnapped children. ³ There is an exception if the person is disabled and has income from a sheltered workshop. ⁴ There is an exception for multiple support agreements.	

CAUTION: Sometimes a child meets the tests to be a qualifying child of more than one person. However, only one person can treat the child as a qualifying child. If the taxpayers have the same qualifying child, they may decide among themselves who will claim the child. If they cannot agree, and more than one taxpayer files a return using the same child, the IRS will use the tie-breaker rules to determine which taxpayer will be allowed to claim the child.

The person that can claim the child as a qualifying child can also take all of the following tax benefits (provided that person is eligible for each benefit) based on the qualifying child – Exemption, Child Tax Credit, Head of Household, Credit for Child and Dependent Care Expenses, and Earned Income Credit – The other person cannot take any of these benefits based on this qualifying child. In other words, you cannot agree to divide the tax benefits. **EXCEPTION:** There are special rules for divorced and separated parents.

TABLE 2 – WHO IS A QUALIFYING PERSON FOR FILING AS HEAD OF HOUSEHOLD? ¹

You may be able to file as head of household if you meet all of the following requirements:

1. You are unmarried or “considered unmarried” on the last day of the year.
2. You paid more than half the cost of keeping up a home for the year.
3. A “qualifying person” lived with you in the home for more than half the year (except for temporary absences). However, if the “qualifying person” is your dependent parent, he or she does not have to live with you.

The following table is only an Overview of the Rules for “Who is a Qualifying Person for Filing Head of Household?” Please see Publication 501 for more details.

IF the person is your...	AND	THEN that person is...
Qualifying child (such as a son, daughter, or grandchild who lived with you more than half the year and meets certain other tests) ²	He or she is single	A qualifying person, whether or not you can claim an exemption for the person.
	He or she is married <u>and</u> you can claim an exemption for him or her	A qualifying person.
	He or she is married <u>and</u> you cannot claim an exemption for him or her	Not a qualifying person. ³
Qualifying relative ⁴ who is your father or mother	You can claim an exemption for him or her	A qualifying person. ⁵
	You cannot claim an exemption for him or her	Not a qualifying person.
Qualifying relative ⁴ other than your father or mother (such as a grandparent, brother, or sister who meets certain tests) ⁶	He or she lived with you more than half the year, <u>and</u> you can claim an exemption for him or her. ⁷	A qualifying person
	He or she did not live with you more than half the year	Not a qualifying person
	You cannot claim an exemption for him or her	Not a qualifying person
¹ A person cannot qualify more than one taxpayer to use Head of Household filing status for the year. ² The term “qualifying child” is defined in TABLE 1 - OVERVIEW OF THE RULES FOR CLAIMING AN EXEMPTION FOR A DEPENDENT. Note: If you are a noncustodial parent, the term “qualifying child” for Head of Household filing status does not include a child who is your qualifying child for exemption purposes only because of the special rules for <i>Children of Divorced or Separated Parents</i> . If you are the custodial parent and those rules apply, the child generally is your qualifying child for Head of Household filing status even though the child is not your qualifying child for whom you can claim an exemption. ³ This person is a qualifying person if the requirements for a <i>Married Child</i> are met. ⁴ The term “qualifying relative” is defined in TABLE 1 - OVERVIEW OF THE RULES FOR CLAIMING AN EXEMPTION FOR A DEPENDENT. ⁵ See <i>Special Rule for Parent</i> for additional requirements. ⁶ A person who is your qualifying relative only because he or she lived with you all year as a member of your household is not a qualifying person. ⁷ If you can claim an exemption for a person only because of a multiple support agreement, the person is not a qualifying person.		

Uniform Definition of a Child – Scenarios

Example 1 - Child lived with parent and grandparent

Patrice and her 3-year-old daughter, Jade, lived with Patrice's mother, Shirley, all year. Patrice is 25 years old and earned \$9,000 in wages during 2005. Jade is a qualifying child of both Patrice and Shirley because she meets the relationship test (Daughter and Granddaughter), age test (3 years old), residency test (lived with her mother and grandmother all year), and support test (Jade provided none of her own support) for both women. Only one of them can claim Jade.

Patrice agrees to let Shirley claim Jade. This means Shirley can claim Jade as a dependent and as a qualifying child for the child tax credit, Head of Household filing status, credit for child and dependent care expenses, and the earned income credit, if Shirley qualifies in all respects for each of those tax benefits.

Example 2 - Two persons unable to agree

The same situation exists as in Example 1 except that Patrice and Shirley are unable to agree. Both women claim Jade as a dependent and as a qualifying child for the child tax credit and earned income credit. As the child's parent, Patrice will be allowed to claim Jade as a dependent and as a qualifying child for the child tax credit and earned income credit. Based on the tie-breaker rules, it is the parent who is allowed the use of their qualifying child on the return regardless of AGI or other issues. The IRS will disallow Shirley's claim to these tax benefits unless she has another qualifying child.

Example 3 - Qualifying children split between two persons

The facts are the same as in Example 1 except that Patrice has two other young children who are qualifying children for both women. While each child can only be claimed once for each tax issue, Patrice and Shirley can choose to split the three qualifying children between them for tax purposes. For example, Patrice can claim one qualifying child and Shirley can claim the other two.

Example 4 - Taxpayer who is a qualifying child

The facts are the same as in Example 1 except Patrice is only 18 years old and did not provide more than half of her own support. This means Patrice is the qualifying child of her mother, Shirley. Shirley can claim Patrice as a dependent. Because of the *Dependent Taxpayer Test*, Patrice cannot treat Jade as a qualifying child and cannot claim her as a dependent. Only Shirley can treat Jade as a qualifying child.

Example 5 - Separated parents

Kathy and Charlie are married and have a 10-year-old son, Tony. They all lived together in 2005 until August 1 when Charlie moved out of the house. In August and September, Tony lived with his mother, Kathy. For the rest of the year, Tony lived with his father, Charlie. Tony is the qualifying child of both parents because he lived with each of them for more than half the year and because he met the relationship, age, and support tests for both of them. Kathy and Charlie are not divorced, legally separated, or separated under a written separation agreement, so the special rule for divorced or separated parents does not apply.

Kathy and Charlie file separate returns. Charlie agrees to let Kathy treat Tony as a qualifying child. This means, if Charlie does not claim Tony as a qualifying child, Kathy can claim Tony as a dependent and treat him as a qualifying child for the child tax credit. However, Kathy cannot claim Head of Household filing status because she and Charlie did not live apart the last six months of the year. As a result, Kathy's filing status is married filing separate. She cannot claim the earned income credit or the credit for child and dependent care expenses.

Example 6 - Separated parents

The facts are the same as in Example 5 except Kathy and Charlie are unable to agree and both claim Tony as a qualifying child. Only Charlie will be allowed to treat Tony as a qualifying child because in 2005 Tony lived with Charlie longer than he lived with Kathy. If Kathy claims an exemption, the child care credit, Head of Household filing status, credit for child and dependent

care expenses, or the earned income credit for Tony, the IRS will disallow the claim for all of these tax benefits.

In addition, because Kathy and Charlie did not live apart the last six months of the year, Charlie cannot claim Head of Household filing status. His filing status is married filing separate. Therefore, he cannot claim the earned income credit or the credit for child and dependent care expenses.

Example 7 – Unmarried parents

Tonya and her 5-year-old son, Patrick, lived with Patrick's father, Pat, all year. Tonya and Pat are not married. Patrick is the qualifying child of both Tonya and Pat because he meets the relationship, age, residency, and support tests for both Tonya and Pat. Tonya's adjusted gross income (AGI) is \$8,000. Pat's AGI is \$18,000. Patrick's father agrees to let Tonya treat Patrick as a qualifying child. This means Tonya can claim Patrick as a dependent and treat him as a qualifying child for the child tax credit, Head of Household filing status, credit for child and dependent care expenses, and the earned income credit, if she qualifies for each of the tax benefits.

Example 8 – Child did not live with a parent

Cynthia and her 7-year-old niece, Ann (her sister's child) lived with Cynthia's mother, Louise, all year. Cynthia is 25 years old and has an AGI of \$9,300. Louise's AGI is \$15,000. Ann is a qualifying child of both Aunt Cynthia and her grandmother, Louise. Ann meets the relationship, age, residency, and support tests for both Cynthia and Louise. However, only one of the women can treat Ann as a qualifying child. Louise agrees to let Cynthia treat Ann as a qualifying child.

Example 9 – Not a qualifying child

Sally's son, George, lives with her but is not her qualifying child because he is 30 years old and does not meet the age test. George may be Sally's qualifying relative if the gross income test and support test are met.

Example 10 – Not a qualifying child

Wanda's 13-year-old grandson, David, lived in three different households during 2005. David lived with his mother for 3 months, then with his uncle for 4 months and finally with his grandmother, Wanda, for the last 5 months of the year. Because David does not meet the residency test for a qualifying child in any of the three households, he cannot be claimed as anyone's qualifying child. Depending on the gross income and support test, however, David may be a qualifying relative.

Example 11 – Child of divorced or separated parents

John and Mary have a 4-year-old daughter Leah. They have been divorced for 2 years. Leah lived with Mary for all of 2005. Under the terms of the divorce decree John has the right to claim Leah. Therefore, John is entitled to claim the dependency exemption and the child tax credit under the special rules for divorced or separated parents. Assuming that she meets all the tests, Mary can claim Leah for Head of Household Filing Status, Child and Dependent Care Credit and the Earned Income Tax Credit.